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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

United States of America for the use of
NORTHERN NEVADA CONCRETE, INC.,
a Nevada corporation; and NORTHERN
NEVADA CONCRETE, INC., a Nevada
corporation in its own capacity

Plaintiffs,

v.

THE GUARANTEE COMPANY OF
NORTH AMERICA USA; WINSPEAR
CONSTRUCTION, LLC, an Idaho limited
liability company; DOES 1-10, inclusive; and
ROE ENTITIES I-X, inclusive,

Defendants.

Case No.: 3:21-cv-00074-HDM-CLB

ORDER GRANTING

**STIPULATION AND JOINT
APPLICATION TO STAY PROCEEDINGS
PENDING ARBITRATION**

Trial Date: None Set.
Complaint Filed: February 5, 2021

Plaintiffs, the United States of America, for the use of NORTHERN NEVADA
CONCRETE, INC., a Nevada corporation (“NNC”) and NNC, in its own capacity (collectively,
“Plaintiffs”) and Defendants THE GUARANTEE COMPANY OF NORTH AMERICA USA

1 (“GCNA”) and WINSPEAR CONSTRUCTION, LLC, an Idaho limited liability company
2 (“Winspear”) (GCNA and Winspear, collectively, “Defendants”) (Plaintiffs and Defendants,
3 collectively, the “Parties”), by and through their undersigned counsel, and pursuant to LR IA 6-2
4 and LR 7-1, hereby stipulate and agree as follows:

5 1. Pursuant to 9 U.S.C. § 3:

6 If any suit or proceeding be brought in any of the courts of the
7 United States upon any issue referable to arbitration under an
8 agreement in writing for such arbitration, the court in which such
9 suit is pending, upon being satisfied that the issue involved in such
10 suit or proceeding is referable to arbitration under such an
11 agreement, shall on application of one of the parties stay the trial
12 of the action until such arbitration has been had in accordance with
the terms of the agreement, providing the applicant for the stay is
not in default in proceeding with such arbitration.

13 2. The Parties hereby jointly apply to stay all deadlines and proceedings in the
14 above-referenced action until the arbitration currently pending between NNC and Winspear has
15 been had. As set forth more fully below, the issues to be resolved in the above-referenced action
16 are referable to arbitration under an agreement to arbitrate between NNC and Winspear, and
17 NNC and Winspear are not in default in proceeding with such arbitration. Moreover,
18 notwithstanding that GCNA is not a party to such arbitration, the arbitration award shall be
19 relevant in the above-referenced action to determine any liability of GCNA.

20 3. On or about January 14, 2019, the Department of Veterans Affairs
21 (“Department”) awarded to Winspear contract number 36C26119C0031 (the “Prime Contract”)
22 for the demolition of existing buildings and construction of a new parking structure at the
23 Veterans Affairs Sierra Nevada Healthcare Facility in Reno, Nevada (the “Project”).

24 4. On or about February 14, 2019, Winspear and NNC entered into a subcontract
25 agreement for NNC to perform specified aspects of the concrete work on the Project (the
26 “Subcontract”).

27 5. The Subcontract contains an arbitration clause that provides, in relevant part, that
28 “any dispute between [Winspear] and [NNC] shall be submitted to binding arbitration

1 administered by the American Arbitration Association under its Construction Industry
2 Arbitration Rules, and judgment on the award rendered by the arbitrator(s) shall be entered in a
3 court having jurisdiction thereof.”

4 6. In connection with the Project and pursuant to the Prime Contract, GCNA issued
5 a payment bond as required by the Miller Act with Bond Number ZS11172370 for the benefit
6 and protection of all persons having a direct relationship with Winspear or a subcontractor of
7 Winspear for furnishing labor, material, or both in the prosecution of the work provided in the
8 Prime Contract (the “Payment Bond”). As a subcontractor furnishing labor and material to
9 Winspear in connection with the Project, NNC claims the benefit and protection of the Payment
10 Bond.

11 7. Disputes arose between NNC and Winspear regarding the Project and the
12 Subcontract.

13 8. On October 29, 2020, NNC filed and served a demand for arbitration and
14 statement of claim with the American Arbitration Association against Winspear.

15 9. On November 17, 2020, Winspear filed and served an answer with affirmative
16 defenses and counterclaim to NNC’s demand for arbitration and statement of claim with the
17 American Arbitration Association.

18 10. On December 1, 2020, NNC filed and served an answer and affirmative defenses
19 to Winspear’s counterclaim.

20 11. That arbitration proceeding is pending and active with Case Number 01-20-0015-
21 4841 (the “Arbitration”), and a two-week evidentiary arbitration hearing is currently set to
22 commence on December 6, 2021.

23 12. On February 5, 2021, NNC filed and served a request to join GCNA in the
24 Arbitration. On February 22, 2021, Winspear opposed NNC’s request to join GCNA to the
25 Arbitration, and GCNA joined Winspear’s opposition.

26 13. On March 2, 2021, the arbitrator denied NNC’s joinder request to make GCNA a
27 party to the Arbitration.

28 ...

1 14. On February 5, 2021, Plaintiffs filed the complaint against GCNA and Winspear
2 in the above-referenced action (the "Complaint") [ECF No. 1].

3 15. On April 30, 2021, Ms. Wendrowski of Seyfarth Shaw LLP waived service of the
4 summons and Complaint on behalf of GCNA and Winspear [ECF Nos. 9-10].

5 16. The Parties respectfully apply to stay the above-referenced action until judgment
6 has been rendered in the Arbitration.

7 NOW, THEREFORE, Plaintiffs and Defendants stipulate and apply to stay all deadlines
8 and proceedings in the above-referenced action pending resolution of the Arbitration, and
9 respectfully request that this Court issue an order consistent with this stipulation and application.

10 GARMAN TURNER GORDON LLP

McDONALD CARANO LLP

11 Dated: June 21, 2021.

Dated: June 21, 2021.

12 By: /s/ Jared M. Sechrist
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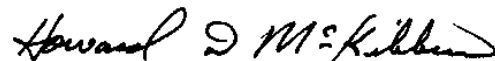
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20 *Attorneys for Defendants*

21 IT IS SO ORDERED.

22 

23 UNITED STATES DISTRICT JUDGE

24 Dated: June 23, 2021